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Appendix 9-C

OSHA Did Not Consider Feasible Cost-Effective Alternatives That Might Lessen the Impact on Small Business

Literature

State of Maryland, Department of Licensing and Regulation, Maryland Occupational Safety and Health Advisory Board, Comments of The Tobacco Institute; Proposed Regulation Prohibiting Workplace Smoking, December 7, 1993, submitted to Maryland Commissioner of Labor and Industry (Philip Morris, Ex. 416-285)

Statement to the U.S. House of Representatives Committee on Small Business on OSHA Reform and Small Business Implications, July 26, 1995, Painting and Decorating Contractors of America. (Philip Morris, Ex. 416-357)

Products, Preventing Pollution, Indoor Air Cleaners Meet Environmental Challenges. (Philip Morris, Ex. 416-360)

Testimony 17-Mar-94, Gray Robertson, President Healthy Buildings International, Inc., House Energy/Health and the Environment Antismoking Regulations, Federal Document Clearing House Congressional Testimony, March 17, 1994 (Philip Morris, Ex. 416-512)

Bingo Smoking Ban Delayed Until July, Russ Loar, Los Angeles Times, December 12, 1994 (Philip Morris, Ex. 416-660)

Comments of Philip Morris, May 17, 1994, Before the Maryland Department of Licensing and Regulation, Division of Labor and Industry, In Re: Proposed Prohibition on Smoking in the Workplace (Philip Morris, Ex. 416-695)

Comments of Philip Morris, December 19, 1993, Before the Washington Division of Industrial Safety & Health In Re: Proposed Standard on Indoor Air Quality and Office Work Environment (Philip Morris, Ex. 416-697)

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Testimony

- The health department in the state of North Carolina has passed regulations limiting smoking in buildings and workplaces. I am not able to comply with the local clean air regulations. I cannot afford the cost of compliance and do not have sufficient existing space to convert into a no smoking area. [Lorraine VanVekoven, Southern Fluid Power, Inc., February 24, 1995, Tr. p. 14,184-14,189].

- Regulations justified for 50 story office buildings and mega-malls with 10,000 employees are not justified for 2,400 square foot stores with 2 employees in Sidney, Montana. [Vern Lysford, Super Pumper, Inc., February 3, 1995, Tr. p. 13,270].

- A single standardized law will cause a lot of hardship to small business in America. [Matthew Swanson, Brengie Sales & Service, February 2, 1995, Tr. p. 13,200].

- Do we really want the large corporations to take over the business world of our country causing us to lose the uniqueness of towns and local areas in the U.S. [Cindy Gilmer, Vice President, Owner and Manger, Southern Billiards, Inc., February 8, 1995, Tr. p. 13,718].

- The proposals that you are hearing today, and have been hearing for sometime to regulate smoking in the workplace, if adopted in its present form, is going to be devastating to our small business industry. [David Howard, Greater Reno-Sparks Chamber of Commerce, November 30, 1994, Tr. p. 7,978].

- This regulation puts a hardship on a lot of small businesses by putting them out of business. [Mike Cavalon, South Georgia Mill Works, Inc., January 30, 1995, Tr. p. 12,830].

- The company operates on about a three percent profit margin. The costs of building a smoking room, in lost productivity and in other costs associated with complying with OSHA's proposed ETS and IAQ rules, would be very substantial. I estimate compliance would cost 67% of profits the first year and 33% of profits in succeeding years. [Tom Pharr, Powell Manufacturing Company, January 13, 1995, Tr. p. 11,316- 11,318].

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- It is not true that every business in their industry will have the same costs and thus compete on a level playing field. We compete with companies from other countries that would not be regulated by OSHA's rule. [Tom Pharr, Powell Manufacturing Company, January 13, 1995, Tr. p. 11,318].

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Appendix 9-D

Smoking Rooms Will Be Very Expensive For Small Businesses

Testimony

- The company would bear the cost of building smoking rooms rather than forcing employees to go outside if the proposed OSHA rule became effective because the company desires to keep employees closer to their work areas, some employees would have to walk a long distance to get to the outside from their work area, and the weather outside is sometimes cold or very humid and very hot or rainy. [Tom Pharr, Powell Manufacturing Company, January 13, 1995, Tr. p. 11,324-11,325].

- It would be very impractical or would not be economically feasible for me to provide approved smoking rooms at all three locations [Lin Boyd, Independent Insurance Agent, February 7, 1995, Tr. pp. 13,570-13,571].

- The cost to small businesses of building a designated smoking room meeting the specifications of the proposed standard would be devastating. [Steven Dorobiala, Pest-control company, November 1, 1994, Tr. p. 4,726-4,727].

- The company is expanding and it would not be economically feasible to build a separate ventilated room for smoking. [Karen Christiansen, Synthetics International, Inc., February 24, 1995, Tr. p. 14,210].

- The company could not afford to construct a designated smoking room meeting specifications of the standard. [Mel Parsell, National Tech Systems, November 1, 1994, Tr. p. 4,808].

- All the profits since I started the business have gone back into the business and to my employees, to purchase current equipment which creates more jobs and to the employee benefit package such as health insurance, vacations, and paid holidays. Building a separate room is not an option I can afford. [Phil Pederson, DC Machine, February 3, 1995, Tr. p. 13,232].

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- The deal is a lose-lose situation. First, we don't have the money to install a smoking room and, second, if we don't put one in, we can't expect our customers to smoke outside when the windchill factors can reach 100 degrees below zero. They will go to a dealership that can afford a warm place to smoke in. [Matthew Swanson, Brengie Sales & Service, February 2, 1995, Tr. p. 13,197].

- No way I could afford to build a special room with a separate ventilation system to the outside. In fact, I do not even have the room to build it even if I could afford it. [Jill Evangelista, Touch of Class, January 30, 1995, Tr. p. 12,896].

- My business is operated out of a trailer, and I cannot afford to remodel to build a smoking room. The proposed smoking room would cost more than the business is worth. [Joy Mullins-Stafford, Beauty Shop and Tanning Parlor, March 3, 1995, Tr. pp. 14,640-14,641].

- I could not afford to build a separate smoking room. [Marlene Schroeder, Owner of a bakery, March 13, 1995, Tr. p. 15,115].

- A small business such as ours does not have the capital to allocate for an expensive ventilation system for our workers to smoke. [Norman Dresser, Vice President of Dresco Belting Co., November 1, 1994, Tr. p. 4,753- 4,754].

- The cost of providing separately ventilated smoking areas for employees would cause the company to impose an outright ban on smoking rather than incur the additional expenses of complying with the regulations. This complete ban would have a devastating effect since it would be very difficult to motivate employees whose jobs are attacked daily in the media for a perfectly legal product. [Norma Lutz, Dibrell Brothers, Inc., January 30, 1995, Tr. p. 12,864].

- I could lose technicians to bigger auto shops who are able to afford to build a smoking room. [James Matthews, Jim's Service Center, March 2, 1995, Tr. p. 14,489].

- Transmission shops that are larger could more easily afford to build a smoking room. The proposed rule would hurt the smaller business. [Merritt Carlson, Fargo Transmissions, February 24, 1995, Tr. p. 14,177].

- The same regulations that "Wal-Marts" can financially comply sometimes put "AGR Industrials" out of business. [Trent Burroughs, AGR Industrial Supply Company, Burroughs Repair Company, February 9, 1995, Tr. p. 13,826].

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- We're competing with major dealerships, and we feel that the amount that we would have to increase our rates would go considerably higher compared to larger businesses. [Darrell Lauer, Auto Repair Shop, February 7, 1995, Tr. p. 13,590].

- The proposed rule would hurt small business such as this company. The proposed rule would be costly, and the very large businesses, unlike small businesses, have the financial resources to comply with the rule and pay the costs. [Jerry Stewart, Stewart's Truck Equipment, Inc., February 10, 1995, Tr. p. 13,858-13,859, 13,861].

- The proposed rule would be more costly for our furniture manufacturing plant than for some of our competitors. These increased expenses would hurt our business and help our competitors. [Audrey Weeks, Destiny Industries, also owns a convenience store and a furniture manufacturing plant, February 24, 1995, Tr. p. 14,235-14,236].

- I have concerns that some of my larger competitors, who could afford to build a smoking lounge, could possibly steal some of my employees along with some of my manufacturing secrets. This is a major concern in that I have invested a lot of time and money in training these employees. [Glen Bondurant, Glen Everett Consultants, March 1, 1995, Tr. pp. 14,436-14,437].

- The "choice" of building a separate enclosed room with negative air pressure or having a no-smoking policy is not really a choice at all for a small business person. Small business people, like my husband's coffee shop, do not have sufficient money to build such smoking rooms. [Kandace Brown-Pullin, Service connection, also runs her own business, Alternative Labor Source, Inc., February 10, 1995, Tr. p. 13,902].

- Because of the impracticability of building a smoking room, the small specialty retailer will be disadvantaged against larger chains or other stores who are capable of building an area where people are allowed to smoke. [Mark Hodroff, Retail Specialty Pet Store, March 13, 1995, Tr. p. 14,998].

- My business would be at an unfair disadvantage to larger competitors who might be able to build a smoking room. [David Waller, President, Pellican State Wholesale, March 13, 1995, Tr. p. 15,091].

- Having to build a smoking room would add another extreme financial burden to a company that has to fight against highly trained, highly motivated competition every day. [Jerry

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Stewart, Stewart's Truck Equipment, Inc., February 10, 1995, Tr. p. 13,860].

- The choices presented in the proposed rule are not really choices because the cost of building a separately ventilated negatively pressurized room is so high that most employers will choose to ban smoking rather than incur such costs. [Raymond Scannel, Director of Research and Special Projects for the Bakery, Confectionery and Tobacco Workers International Union, October 11, 1994, Tr. p. 2,764 - 2,765].

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Appendix 9-E

Small Businesses Will Experience Significant Productivity Losses Under the Proposed Rule

Testimony

- We have a small shop and a good relationship with our employees. That gives us good productivity because they're feeling good and they want to work. They enjoy their work and they want to work for me. If we start doing things that are going to frustrate them, like banning smoking, their attitude is going to deteriorate. When the attitude goes down, production will go down right with it. [Philip Pederson, DC Machine, February 3, 1995, Tr. p. 13,262].

- I am definitely more productive when I can smoke at my desk. I am the only one there. I can't leave the office. I have to be there to catch the phones, to make sure that if someone does walk through the door I am there to greet them, and being able to smoke at my desk helps me to be able to continue working and take care of all these things. [J. Paige DuBois, Young & Associates, February 6, 1995, Tr. p. 13,445].

- Eliminating smoking entirely in my workplace would cause morale problems in my tight-knit, family-type atmosphere. [David Waller, President Pelican State Wholesale, March 13 1995, Tr. p. 15,091].

- In a small business, such as in this company, there are many family members. The proposed rule causes a controversy between smoking family members and nonsmoking family members. [Kevin Sandberg, Sandberg Implement Co., February 21, 1995, Tr. p. 13,981].

- With seven employees, two of whom smoke, it would also be difficult to plan a smoking time-out, which brings up the point of how to compensate those employees who don't smoke. Not only would our customers suffer, so would employee morale, not to mention that we would have to track people down on smoking breaks when we get busy. We do not have pre-planned breaks. We adjust to the day's schedule and work accordingly.

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The expense that Builders Supply would incur to stay competitive with a national chain by having a designated smoking area would definitely affect our profitability. Inevitably, it would affect employees' share of pension profit plans. [Lee Saufley, Builders Supply Window Company & Hardware Store, February 2, 1995, Tr. p. 13,216].

- We are a very close group and have been for very many years. To see the reaction to the enforcement of this regulation is very regrettable. I wouldn't want to lose some of these people. [George Staples, Clinch Tight Corporation, February 2, 1995, Tr. p. 13,241].

- Our employees could easily quit and go and work for someone else's company if it became too inconvenient for them to smoke. [Gail Veseley, Argo Industries, February 7, 1995, Tr. p. 13,554].

- It is difficult to find a qualified mechanic familiar with farm equipment. The company goes to great expense training its mechanics. If these mechanics were not allowed to smoke while working, the company could lose them to competitors that do not comply with the proposed rule or whom do not need to comply. Even if all the businesses in the area were to comply with the proposed rule, the mechanics could go to work for a farm where they could smoke outside. The loss of these employees would be devastating to my business. [Kevin Sandberg, Sandberg Implement Co., February 21, 1995, Tr. p. 13,980].

- This store is a one person business and we would have to have another person employed there just so I could smoke. [Tami Dobrovolny, Big Red Liquor, February 9, 1995, Tr. p. 13,768].

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Appendix 9-F

Small Businesses Will Suffer Business Losses Under the Proposed Rule

Testimony

- Telling customers they could not smoke in our dealership would make it difficult to keep customers from going to bigger car dealerships ... . If we didn't put the addition on, we would no doubt lose a good percentage of our smoking customers to our competitors ... [Matthew Swanson, Brengie Sales & Service, February 2, 1995, Tr. p. 13,196-13,197].

- We will lose customers to larger chains who are able to put in a smoking lounge. [David Hicks, David's Automotive, March 3, 1995, Tr. p. 14,537].

- Having to enforce the proposed rule with respect to customers would take away the friendliness in the relationship with our customers. That friendliness and concern is what distinguishes this company from its larger, more financially secure competitors. Thus, enforcing the proposed rule with respect to its customers would take away this competitive advantage. [Jerry Stewart, Stewart's Truck Equipment, Inc., February 10, 1995, Tr. p. 13,867].

- It would be very hard for us to tell a customer that we can't deal with you if you're smoking a cigarette. We serve a four county area, and I'd say our population area is about 3,500 people or less, so one customer is really important to us. [Bob Mendenhall, Owner, Juanita Champion Auto Parts Store and Imperial NAPA, February 3, 1995, Tr. p. 13,299].

- We are a small business and we are struggling, like I said, our profit margins are low and we just can't afford to alienate customers by asking them not to smoke in our place of business or telling them to leave if they refuse to put out a cigarette. I feel that it would cost us business and we can't afford to lose customers, not even one customer. [Margie Ronson, Music City Auto Care Products, February 3, 1995, Tr. p. 13,314].

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- It is not unusual to see a 20-year customer chewing tobacco and smoking a cigarette while telling me he'll pay his account when he sells his tobacco. How do I tell this man he cannot smoke in our store? I imagine our Mom and Pop type image would be destroyed and he would promptly go to the competitor. [Lee Saufley, Builders Supply Window Company & Hardware Store, February 2, 1995, Tr. p. 13,215].

- The majority of our relationship with the customers comes in them standing around in the morning, the contractors talking, smoking their cigarettes and drinking coffee and discussing what to do and what projects they can work on. We will also discuss how we can help them. I feel that we would lose that familiar warm environment that we have, that people come to Builders Supply for, if we had to ban smoking. [Lee Saufley, Builders Supply Window Company & Hardware Store, February 2, 1995, Tr. p. 13,227].

- If the regulation goes into effect and we force our customers not to smoke, they could go to Sioux Falls to a bigger dealership that does huge volume and could possibly have the funds to build smoking rooms for their employees and customers. We do not have that option. [Justin Dearduff, Dearduff Chevrolet/Pontiac, January 31, 1995, Tr. p. 12,997].

- I would lose business to larger competitors who could afford to build smoking room in their facility. [Kevin Corrigan, Summit National Bank, December 5, 1994. Tr. p. 8,191].

- The current system of allowing customers to smoke in the facility has worked for us. Businesses should be able to handle this on their own. [Kevin Corrigan, Summit National Bank, December 5, 1994, Tr. p. 8,192].

- This regulation puts a hardship on a lot of small businesses by putting them out of business. [Mike Cavalon, South Georgia Mill Works, Inc., January 30, 1995, Tr. p. 12,830].

- These fines could cost us our business. We do not have a big budget or savings to pay a fine of $7,000. [Rita Underwood, Hair Now, November 1, 1994, Tr. p. 4,815].

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Appendix 10

OSHA Made No Effort To Account for the Varying Circumstances and Policies at U.S. Businesses

Testimony

- Private businesses are capable of managing any problems with smoking without the intrusion of this regulation. There are many differences in the various companies and the various parts of the country. This one rule does not fit all the industries and states appropriately. [Todd Sargeant, Rocky Mountain Supply, Inc., February 24, 1995, Tr. p. 14,243-14,244].

- Smoking is not a problem in my facility and the proposed rule is OSHA's attempt to develop or put limits on personal responsibilities and/or habits. [Warren Wild, McBride's, Inc., February 10, 1995, Tr. p. 13,844].

- Employers can work out the air quality problems without the proposed rule. OSHA's guidance in the form of suggestions and ideas would be helpful, but the policy should not be mandated in the form of a regulation. [Warren Wild, McBride's, Inc., February 10, 1995, Tr. p. 13,844].

- There has only been one complaint about smoking. One employee who did not smoke complained. The situation was remedied by opening the door. Everybody was happy with the result. [Warren Wild, McBride's, Inc., February 10, 1995, Tr. p. 13,843, 13,846].

- There has not been a single complaint about indoor air quality, about stuffiness or odors like vehicular exhaust coming into the office area. [Jerry Stuart, Stuart's Truck Equipment, Inc., February 10, 1995, Tr. p. 13,864].

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- The one fatal flaw that lies at [the] heart of the proposed indoor air quality regulations is that the rules are based on the one size fits all approach. The proposed rules do not fit the resort casino industry. [Wayne Edward Mehl, Nevada Resort Association, October 24, 1994, Tr. p. 3,554].

- A Manhattan office building and Super Pumper #15, Eagle Butte, South Dakota, do not have the same indoor air quality problems and should not be subject to the same standard. [Vern Lysford, Super Pumper, Inc., February 3, 1995, Tr. p. 13,270].

- A myriad of factors make each American workplace unique: the type of work being performed, number of employees, habits of individual smokers, number of smokers in each work group, proximity of non-smokers to smokers, work station design, building site, ventilation system efficiency, each individual's perception of secondhand smoke issues, level of tolerance of non-smokers towards smokers, and cultural differences [Julie Reimer, Westinghouse Air Brake Company, February 1, 1995, Tr. p. 13,111-13,112].

- I am even more confused how an agency could write a rule that is uniform to cover the whole country. We have too many variables in here. [Gordon Bryan, Diamond Steam Cleaning, February 6, 1995, Tr. p. 13,407].

- I have reviewed these rules and regulations of this proposal and it looks like it should have one-size-fits-all stamped right on the front cover. I don't think it's a workable proposal at all. [Pete Tilghman, Jr., Tilghman Chevrolet, February 6, 1995, Tr. p. 13,499].

- One of the Council's main concerns with the proposed Rule as drafted is that it does not make any distinctions between employers. John Martonik said on the opening day of these hearings that, "Some provisions proposed may not be in the control of all employers." This is exactly the point and this issue of employer responsibility must be clearly and fairly addressed in the proposed Rule. [Jan Collins, Executive Director of the Workplace Health and Safety Council, October 11, 1994, Tr. p. 2,719].

- Due to the lack of ventilation and the stuffiness in the basement environment of the company, an area in the lunch room was set aside for cigarette breaks. This room is equipped with a telephone and has plenty of counter space so the employees can work while taking a cigarette break. The room has a room-size air purifier. The company resolved its

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problem on its own. [Karol Brown, Point to Point, Inc., February 10, 1995, Tr. p. 13,870].

- The employees in our office are content with the way that we have worked out our own smoking problem and many wonder why we would need government regulations to complicate the answer that we've already found. [Karol Brown, Point to Point, Inc., February 10, 1995, Tr. p. 13,872].

- The proposed rule is taking away my basic rights to make decisions for my business. OSHA doesn't need to be my Mommy and hold my hand to tell me what I can and cannot do. I have the right to work out a personal problem with my employee, to find a compromisable solution. [Kandace Brown-Pullin, Service Connection, also runs her own business, Alternative Labor Source, Inc., February 10, 1995, Tr. p. 13,902].

- The company has always tried to accommodate the employees. There has only been one complaint regarding smoking. The company made the office in which that complaining employee worked smoke free. If you want to smoke, you go into another office and shut the door. A separate vent and fan was placed in one office where one of the owners smoked cigars as an accommodation. [Karen Christiansen, Synthetics International, Inc., February 24, 1995, Tr. p. 14,208-14,209].

- Because customers and employees seem to be really conscious about offending other people with their cigarette smoking, the proposed standard is unnecessary. [Rita Underwood, Hair Now, November 1, 1994, Tr. p. 4,826].

- I just don't see that government needs to be imposing indoor air qualities on businesses that have worked out a system that works for their people and their customers. [William McCarty, President and Chief Executive Officer of McCarty Hull Inc., November 1, 1994, Tr. p. 4,840].

- The results from a survey indicated that the company's accommodation policy was strongly supported by the employees. [William McCarty, President and Chief Executive Officer of McCarty Hull Inc., November 1, 1994, Tr. p. 4,830].

- I try to accommodate clients and possible clients that visit my home office. [Donna Thompson, Employment Research Services, November 1, 1994, Tr. p. 4,790].

- Super Pumper has strict written policies covering where employees can and cannot smoke. While the store offices are not designed with negative pressure, there have been no

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complaints at any of our stores about smoking. [Vern Lysford, Super Pumper, Inc., February 3, 1995, Tr. p. 13,268].

- It has been estimated by the CDC that 85-90% of business have adopted some form of smoking controls. In fact, the company that I work for allowed limited smoking in the building just four years ago. You could smoke in your office or in the break room. More recently, the managers and employees were consulted and it was decided that the company would become a smoke free environment. This is a choice our company made independent of any government regulation. [Gerald Marshall, Director of Marketing, Carr Scarborough Microbiologicals, Inc., February 3, 1995, Tr. p. 13,287].

- I have designated smoking areas for the bartender, kitchen help, waitresses and waiters away from all food preparation areas. I have been doing this for 20 years. I did not wait for anybody to tell me to do it, but did it on my own. [Peter Karangelen, Kent Lounge, February 3, 1995, Tr. p. 13,324].

- Cactus Jack's customers, through a customer advisory board, established a smoking policy for the club. [Steve Browne, Owner, Cactus Jack's Casino, February 2, 1995, Tr. p. 13,173].

- Brengie Sales maintains a smoking policy based on being polite. Employees don't smoke around a customer that doesn't appreciate it. Employees never smoke in a customer's car. [Matthew Swanson, Brengie Sales & Service, February 2, 1995, Tr. p. 13,199].

- We have an open door smoking policy at our business and, to my knowledge, in 30 years of business we have not had a single complaint. [Lee Saufley, Builders Supply Window Company & Hardware Store, February 2, 1995, Tr. p. 13,219].

- Most businesses already have established policies regarding smoking in the workplace which work. Most people with simple common courtesy and common sense generally handle the situation adequately. A federal mandate is not needed in the private sector. [Tim Urban, Sioux Empire Hobbies, Inc., February 21, 1995, Tr. p. 13,993].

- The rules are unnecessary since the Company has a current policy that works for our particular situation. Most of the employees have individual work areas where they are not subject to someone else's smoke during the day. The manufacturing facility has over 60,000 sq. ft. with 50 people working in that area. Therefore, there is over 1,000 sq. ft. per person of their individual space. [A. T. (Tom) VanEtten,

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CEO of Griffin & Company, January 31, 1995, Tr. p. 12,953, 12,958-12,959].

- My restaurant has smoking and nonsmoking sections, separated with a 6' high partition. There is good air ventilation. My restaurant customers like the choice and freedom of smoking and nonsmoking. [Eddy Giel, University Place Restaurant, October 24, 1994, Tr. p. 3,545].

- In eight years, I have never once had a complaint from any of my tenants. They have worked it out themselves. [Gordon Bryan, Diamond Steam Cleaning, February 6, 1995, Tr. p. 13,414].

- What I am saying here is that it is up to the people, and the people I deal with, which are a number of different businesses, have resolved this issue, and we don't need a ruling to resolve it. [Gordon Bryan, Diamond Steam Cleaning, February 6, 1995, Tr. p. 13,407].

- Many of the members of my organization are, on their own initiative, addressing the issue of tobacco usage in the workplace. [Mark G. Ellis, American Mining Congress-National Trade Association, representing all sectors of the mining industry, October 11, 1994, Tr. p. 2,700]

- I conducted an informal survey on this issue. The overwhelming consensus in northern Nevada casinos is that the current policy of accommodation is working. Casinos are profitable because they listen to what their guests want. [Amy Halley, McMullen Strategic Group, November 30, 1994, Tr. p. 7,903].

- We currently have approximately 75 percent of our rooms as non-smoking rooms, and this percentage has changed continuously over the nine-year history of the hotel. It continues to evolve, and will in the future. It works. And it's continued to work for this hotel. Additional regulations are not needed and will take away the flexibility we need in order to accommodate our customers and be successful. [Michael Whipple, Sheraton Inner Harbor Hotel, December 14, 1994, Tr. p. 9,056-9,057].

- Government rules and regulations are impinging on individuals' freedoms. I should have the freedom to devise my own smoking policy which would accommodate both smokers and nonsmokers. [Marge Dahlquist, Dahlquist Realty, February 21, 1995, Tr. p. 14,014-14,015].

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- I put a 20-ton air conditioning system in my restaurant. I have had no complaints from people about the air quality in the restaurant. I do not want OSHA telling me what to do and making me spend a lot of money when there is no problem. [James Britt, restaurant owner and executive vice president of the National Restaurant Association, October 24, 1994, Tr. p. 3,631-3,632].

- Almost all major casinos have no-smoking areas. Five huge new hotel casinos have opened in the last three years which have great ventilation. It is not noticeable that anybody smokes in them because they are so well ventilated and taken care of. [Wayne Edward Mehl, Nevada Resort Association, October 24, 1994, Tr. p. 3,567-3,568].

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Appendix 11

OSHA Did Not Account for the State and Local Provisions that Already Address Smoking Issues

Literature

Health, Public Safety and Environment Committee, Board of Supervisors, City and County of San Francisco, Regular Meeting Minutes, re: Enforcement of Smoking Prohibitions, May 8, 1995 (Philip Morris, Ex. 416-10)

Smoking Ban Vexes Area Cities, Who Should Enforce New State Law?, Mary Lane, Eureka, CA, Times Standard, January 23, 1995 (Philip Morris, Ex. 416-11)

State Smoking Law Contains Hazy Areas, Martha Coe, Willows, CA Daily Journal, January 4, 1995 (Philip Morris, Ex. 416-13)

Deputies to Issue Tickets for Smoking, Margo McCall, Palmdale, CA, Antelope Valley Press, January 6, 1995 (Philip Morris, Ex. 416-15)

Taking The Battle From Capital Hill To The State Capitals, Restaurants USA, Washington Report, Vol. 15, No. 5, May 1995 (Philip Morris, Ex. 416-32)

Smokers Get a Break in Md., Governor Set to Allow Areas in Restaurants, Bars, Charles Babington, The Washington Post, March 8, 1995 (Philip Morris, Ex. 416-42)

Texas Business Alliance for Free Choice, Press Release, *Texas Business Alliance to Support Legislation Establishing Statewide Smoking Standards*, March 10, 1995 (Philip Morris, Ex. 416-77)

Makes Sense, Uniform Statewide Smoking Standards a Good Idea, Houston Chronicle, March 21, 1995, p. 20A (Philip Morris, Ex. 416-81)

Santa Clara May Repeal Strict Anti-Smoking Law, Nonsmokers' Groups Fear Start of Trend, David A. Sylvester, San Francisco Chronicle, May 13, 1995 (Philip Morris, Ex. 416-91)

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Council Allows Simi Officers to Enforce State Smoking Ban, Terry Kanakri, Daily News (Woodland Hills, CA), May 11, 1995 (Philip Morris, Ex. 416-222)

Tustin, Letter to Editor, Register (Santa Ana, California), May 18, 1985 (Philip Morris, Ex. 416-223)

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Bad for Business; Let Restaurants Make Own Policies on Smoking, James Dunn, Robert Ramsey, Richmond Times-Dispatch, April 15, 1995, p. A6 (Philip Morris, Ex. 416-227)

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Memorandum to the members of the Advisory Commission of the City of Rancho Cucamonga from Mark Lorimer, Senior Administrative Assistant, re: smoking ordinance, December 2, 1987. (Philip Morris, Ex. 416-430)

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Comparison chart of smoking regulations from the Rancho Cucamonga Resident City-Wide Survey. (Philip Morris, Ex. 416-432)

Council May Ease Non-Smoking Law, Jeff McDonald, Los Angeles Times, February 14, 1995 (Philip Morris, Ex. 416-465)

North Carolina Law Nears on Smoking, Statewide Rules Cap Local Powers, Charlotte News and Observer, July 10, 1993 (Philip Morris, Ex. 416-517)

Testimony

- OSHA is penalizing the company for even hiring a smoker. We can't discriminate, there are other laws that prevent us from doing that. [Gail Veseley, Argo Industries, February 7, 1995, Tr. p. 13,543].

- I plan to hire additional people later this year. I do not want to have to discriminate between employees on the basis of whether they smoke or not in regards to how that would affect my business in complying with the proposed rule. [Tim Urban, Sioux Empire Hobbies, Inc., February 21, 1995, Tr. p. 13,990].

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- Winter Bell Company is a manufacturer of various packaging materials. If we were required to build a separate free-standing room enclosed with outside ventilation, it would go against the grain of the team concept which has taken years to develop at the company. By requiring smokers to go into a separate smoking room to smoke, you are segregating the smoking employees from the nonsmoking employees and that is not good for the team concept. Management has already worked out an agreement between smokers and nonsmokers, being especially sensitive to freedom of choice. [Rick Lewis, Winter Bell Company, February 1, 1995, Tr. pp. 13,152-13,153].

- Washington State's Department of Labor and Industries has adopted smoking regulations that are carbon copies of OSHA's proposed smoking regulation. [Diane Michalek, Aviation West, October 27, 1994, Tr. p. 4,050].

- ETS already is regulated by many state and local ordinances. If OSHA regulates ETS, OSHA's very small staff and limited resources would be diverted away from other serious safety and health problems that OSHA needs to deal with. OSHA does not have the money or staff to deal with the most serious of workplace problems over which no one else has jurisdiction and which no other federal or state agency is addressing. [Margaret Seminario and Rex Tingle, Department of Occupational Safety and Health for the AFL-CIO, January 20, 1995, Tr. p. 12,218-12,219].

- ETS in the workplace is already subject to many state and local ordinances. OSHA's proposed rule on ETS would preempt these state and local laws regulating ETS in the workplace. OSHA would become the primary agency with oversight over ETS in the workplace. This would not be feasible and would not be in the best overall interest of worker safety and health. [Margaret Seminario and Rex Tingle, Department of Occupational Safety and Health for the AFL-CIO, January 20, 1995, Tr. p. 12,218-12,221].

- Vermont has a state statute which provides that an employer and its employees together are to establish the smoking policy of the facility. This statute is already working very well. OSHA's proposed rule would contradict Vermont's statute. [William Gillam, Jr., Vermont Business Coalition, January 20, 1995, Tr. p. 12,369-12,370].

- Vermonters know what to do best for Vermonters. We in Vermont can't dictate what California is going to do, we in Vermont can't dictate what Georgia is going to do and, frankly, we do not like to have D.C. tell us what we should be doing, because

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we should know best because we live there and deal with it every day. [William Gillam, Jr., Vermont Business Coalition, January 20, 1995, Tr. p. 12,372].

- Workplace smoking is an issue that should be left to individual businesses or state and local legislative bodies. Federal Executive Order 12612 requires that agencies such as OSHA, to the extent possible, refrain from limiting state policy options. Yet, OSHA's proposed ETS rule would limit state policy options. OSHA's proposed rule would preempt Utah's recently enacted state smoking regulation, which limits smoking in any place of public access. [Senator Mike Dmitrich, State Senator from Utah, January 9, 1995, Tr. p. 10,417-10,420].

- Smoking regulations can best be handled on the local level rather than the federal level. [Senator Mike Dmitrich, State Senator from Utah, January 9, 1995, Tr. p. 10,429-10,430, 10,433].

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Appendix 12

The Requirement That Designated Smoking Areas Be Areas Where No Work Can Be Performed Is Not Reasonably Necessary Or Appropriate

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Appendix 12-A

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Appendix 12-B

The Proposed Rule Would Prohibit Employees From Performing Any Work Activities In A Designated Smoking Room

Literature

The War On Secondary Smoke Is Based On Shaky Science, John Shanahan, The San Diego Union Tribune, January 3, 1993 (Philip Morris, Ex. 416-152)

EPA Blows Smoke On Risk of Breathing It; Government, Juggling Statistics, Reaches A Conclusion to Match Its Flawed Hypothesis, Robert Scheer, Los Angeles Times, May 29, 1994 (Philip Morris, Ex. 416-170)

Smoking Suit Ready for Next Step, Patrick Jackson, Times Recorder, 1995 (Philip Morris, Ex. 416-188)

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Environmental Economics And The Social Costs Of Smoking, Dwight R. Lee, Contemporary Policy Issues, Vol. IX, January 1991, pp. 83-92 (Philip Morris, Ex. 416-220)

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Santa Clara May Repeal Strict Anti-Smoking Law, Nonsmokers' Groups Fear Start of Trend, David Sylvester, San Francisco Chronicle, May 15, 1995 (Philip Morris, Ex. 416-373)

Businesses Face the Facts of Curbs on Smoking, Douglas Martin, The New York Times, January 11, 1995 (Philip Morris, Ex. 416-376)

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Letter of Yvonne Hester to Santa Clara city council, October 10, 1993 (Philip Morris, Ex. 416-538)

Committee on Agriculture, Subcommittee on Specialty Crops and Natural Resources, U.S. House of Representatives, A Critical Appraisal of the Report on Environmental Tobacco Smoke issued by the U.S. Environmental Protection Agency on January 7, 1993, of Dr. Gio Batta Gori, June 1993. (Philip Morris, Ex. 416-547)

Fat Cats at the Public Trough: How the Anti-Smokers Have Gotten Rich and Powerful on Public Funds, Connecticut Smoker, Vol. I. (Philip Morris, Ex. 416-548)

City and County of San Francisco complaint letter to Robert Symon, March 30, 1995 (Philip Morris, Ex. 416-643)

City and County of San Francisco complaint letter to Jim Calinan, May 10, 1995 (Philip Morris, Ex. 416-653)

Testimony

- Although I could post a sign on the door of the designated smoking room that says "Don't take any papers in," I would have no way of policing that restriction. Even walking by the designated smoking room and asking a smoker inside to do certain work when the person is finished with his break, would constitute work inside the smoking area and, thus, violate the

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proposed standard. There is no way of stopping employees from talking about work in a designated smoking room. [Steven Dorobiala, Pest Control Company, November 1, 1994, Tr. pp. 4,737; 4,743-4,744].

- With the current regulation proposal, it doesn't seem like we'll be able to talk shop during our breaks anymore. Our meeting room and break room lounge would be separate. [Warren Wild, McBride's, Inc., February 10, 1995, Tr. p. 13,843].

- In the case of most of the people that I deal with, when you take that smoke break, 90% of us take our work with us so, you know, we are just as productive during that time. [Donna Thompson, Employment Research Services, November 1, 1994, Tr. p. 4,795].

- I could not even attempt to police the employees while in a designated smoking room in order to assure that none of them work. [Mel Parsell, National Tech Systems, November 1, 1994, Tr. p. 4,809].

- Employees currently perform work on a regular basis in the company smoking room. [Mel Parsell, National Tech Systems, November 1, 1994, Tr. pp. 4,798-4,799, 4,811].

- Not working in smoking areas is ridiculous. [Mel Parsell, National Tech Systems, November 1, 1994, Tr. pp. 4,808-4,809].

- Since these laws have always been in effect, I have always brought my work with me into the smoking area. This way, it does not stop my productivity and I can smoke while I work. [Terry Cicote, Genesee Manufacturing Company, January 30, 1995, Tr. p. 12,843].

- Putting smokers in a non-working room is impractical. I am always working. I don't know where you could put me that I wouldn't discuss real estate. [Sandra McCafferty, Real Estate Agent and Broker, February 6, 1995, Tr. p. 13,421].

- I'm the only one in an office which is directly vented to the outside. However, we could not smoke in there because I would be doing my duties. [Edward Slaven, Philadelphia Flatware, February 8, 1995, Tr. p. 13,652].

- I do not understand why it would be wrong for me to smoke while I work in an office that only I occupy. If I had to quit working and go into a special room to smoke, it would take me twice as long to finish my work. It would be impractical for me not to be able to do any work while in the

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smoking room. [Grayce Wingen, Sioux Merchant Patrol, Inc., February 1, 1995, Tr. p. 13,104].

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Appendix 12-C

The Proposed Rule Would Prohibit Customers From Smoking Where Employees Are Present

Testimony

- The Council also notes that provisions regarding designated smoking areas have no practical application in the restaurant industry, due to the stipulation that no employees be permitted to enter the smoking area to perform normal work activities. [Terrie M. Dort, National Council of Chain Restaurants - National Trade Industry Group, December 6, 1994, Tr. p. 8,465].

- A designated smoking room is unrealistic. Restaurant customers could go there to smoke, but the restaurant could not serve food or drinks, bring people their checks, remove dirty dishes, wipe off tables and counters, or do any of the things you have to do in a restaurant in that area. A restaurant obviously could not serve smokers by building a smoking room. [W. W. Naylor, owns Naylor Restaurant, October 24, 1994, Tr. p. 3,637].

- Restaurants cannot build separately ventilated rooms for smokers as a practical matter because no employees could service the room. [William Fisher, executive vice president of the National Restaurant Association, October 24, 1994, Tr. p. 3,643-3,644].

- Designated smoking rooms for restaurants are impractical. There is no practical way for a restaurant to serve customers in a smoking room under the proposed OSHA rule. [William Fisher, W. W. Naylor, and James Britt, National Restaurant Association, October 24, 1994, Tr. p. 3,707-3,708].

- How would a bar owner comply with OSHA's proposed ETS rule by protecting bartenders' and waiters' staff from ETS and allow smoking in the lounge at the same time? What is a hotel owner to do to protect a bell hop who walks into a private hotel room when the customer is smoking? [William Gillam, Jr., Vermont Business Coalition, January 20, 1995, Tr. p. 12,373].

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- I don't see how a robot waiter or waitress could actually substitute for personal help. It's just impossible, it's unreal, it's unheard of. It's the personal touch in the restaurant business. It's important to have your floor cleaned and you have to have this done. You also have to have the attendants. The person waiting on you has to be attentive. If you don't have any of that, that's when they call me. So, you have to have that and a robot is no answer for anything like that, that's outrageous. [Peter Karangelen, Kent Lounge, February 3, 1995, Tr. p. 13,329].

- It is not feasible to have a smoking section in a casino which employees could not enter. [Steve Browne, Owner, Cactus Jack's Casino, February 2, 1995, Tr. p. 13,187].

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Appendix 12-D

The Restriction On Working In Designated Smoking Rooms Would Be Impossible To Enforce

Testimony

- Enforcement of the proposed regulation would be almost impossible because of the space in the facility. They have a 33,000 sq. ft. facility consisting of five buildings. If the proposed rule became effective, they may have to hire someone to patrol the area to make sure the employees weren't sneaking a smoke inside. [Warren Wild, McBride's, Inc., February 10, 1995, Tr. p. 13,841, 13,844].

- There is no way of stopping employees from talking about work in a designated smoking room. [Steven Dorobiala, Pest Control Company, November 1, 1994, Tr. p 4,737].

- Although I could post a sign on the door of the designated smoking room that says, "Don't take any papers in," I would have no way of policing that restriction. [Steven Dorobiala, Pest Control Company, November 1, 1994, Tr. p. 4,737].

- I could not even attempt to police the employees while in a designated smoking room in order to assure that none of them work. [Mel Parsell, National Tech Systems, November 1, 1994, Tr. p. 4,809].

- I work on the clients and would not have time to monitor each activity of my employees to determine whether or not they are smoking. [Rita Underwood, November 1, 1994, Tr. p. 4,815].

- This proposed rule would be bad for morale as well as take my time to police this proposed regulation (Jerry Walls, President, Lookout Valley Tool & Machine, February 7, 1995, Tr. p. 13,598].

- Another problem is that we cannot regulate smoking whenever there is only one person on duty. The only way to ensure compliance would be adding a second employee and/or security

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cameras. [Vern Lysford, Super Pumper, Inc., February 3, 1995, Tr. p. 13,269].

- It would be difficult as the owner of a business who spends a lot of time in the field to make sure that employees in both stores are complying with the regulation. [Bob Mendenhall, Owner, Juanita Champion Auto Parts Store and Imperial NAPA, February 3, 1995, Tr. p. 13,306].

- It will be difficult to enforce the rule. We will have violations of it from employees. [Nathan Anderson, Small Electrical Company, February 8, 1995, Tr. p. 13,701].

- It would be difficult to enforce and prohibit employees from conducting business in an OSHA mandated smoking lounge. [Debrah Baker, Pro Rental Management Company, March 2, 1995, Tr. p. 14,476].

- I would not be able to enforce this policy or spend the time to make sure that the policy was being followed. [James Matthews, Jim's Service Center, March 2, 1995, Tr. p. 14,483].

- There will be difficulties enforcing the regulation because the company does not have a lot of supervisors and this regulation would likely drive smoking "underground." [Kenneth Snella, Berkshire Electric Cable Company, March 3, 1995, Tr. p. 14,601, 14,602].

- Some employees are going to smoke a cigarette no matter what you tell them to do, and it would be very difficult to penalize them for doing so. [David Waller, President Pelican State Wholesale, March 13, 1995, Tr. p. 15,099].

- The rule would be very difficult to enforce in my facility. [David Waller, President, Pelican State Wholesale, March 13, 1995, Tr. p. 15,092].

- Management complains about having to become involuntary members of the "smoking police," and my employees don't like being spied upon like disobedient children. [Diane Michalek, Aviation West, October 27, 1995, Tr. p. 4,055].

- Washington State's smoking regulation is impossible to enforce because it regulates people's behavior and employers cannot control everything that their employees do every minute that they are at work. [Diane Michalek, Aviation West, October 27, 1995, Tr. p. 4,056].

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Appendix 13

The Proposed Rule Would Unreasonably And Inappropriately Make Employers Responsible For The Smoking Behavior Of Customers Or Others Whom They Do Not Control

Literature

New "No Smoking" Law Criticized, Mary Good, Mariposa, CA, Mariposa Tribune, January 4, 1995 (Philip Morris, Ex. 416-16)

'Enough': Smokers Find a Friend, Michael T. Kaufman, The New York Times, May 10, 1995 (Philip Morris, Ex. 416-90)

Letter of Garle A. Whitson, Snowville Truck and Travel Plaza, to Governor Mike Levitt, Utah, re: smoking law in Utah (Philip Morris, Ex. 416-100)

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Who's obeying the new rules -- and who's not, April 25, 1995 (Philip Morris, Ex. 416-114)

Looming Smoking Ban Draws Fire and Shrugs, Kim Clark, Baltimore Morning Sun, March 4, 1995, p. 14C (Philip Morris, Ex. 416-171)

What You Say . . . Speaking On Behalf of the Rights of Business Owners, Not Smokers, Letter to Editor, Journal Herald, April 21, 1995 (Philip Morris, Ex. 416-189)

Transcript, in the matter of: Prohibiting Smoking in the Workplace, hearing, December 16, 1993 (Philip Morris, Ex. 416-205)

Letter of Cary Lee Farrell, to Division of Labor and Industry, Maryland, May 15, 1994 (Philip Morris, Ex. 416-210)

Trendy Eateries Light Up For Keeps, Richard Johnson, New York Post, June 24, 1995 (Philip Morris, Ex. 416-239)

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Letter of Linda Horton, Brunch House Restaurant, August 28, 1992, to The Town Council, Paradise, CA, re: impact of smoking ordinance (Philip Morris, Ex. 416-256)

Complaint Form and correspondence of City of Pismo Beach (CA) with Beachhouse Diner, April 1995, re: complaints of smoking in restaurant, violation of AB 13 (Philip Morris, Ex. 416-267)

Handwritten notations on A.B. 13 complaints. (Philip Morris, Ex. 416-461)

Marlboro Country It Ain't, Amy Cortese, Business Week, April 24, 1995 (Philip Morris, Ex. 416-499)

City and County of San Francisco complaint letter to Heliodoro Tingson, Jr., March 30, 1995 (Philip Morris, Ex. 416-644)

City and County of San Francisco complaint letter to Rueben Aguinaldo, April 4, 1995 (Philip Morris, Ex. 416-645)

City and County of San Francisco complaint letter to Cathleen Dega, April 10, 1995 (Philip Morris, Ex. 416-646)

Smoke Signals in Maryland, Editorial, The Washington Times, August 19, 1994 (Philip Morris, Ex. 416-673)

Testimony

- There are five other companies in our building, two of which have their own separate area. The two other companies and ours share space. We are all basically together. There's no walls between us. But if an employee from one of the other two companies that we share the area with smokes a cigarette, there is nothing to stop that smoke from drifting into our area. [Gail Veseley, Argo Industries, February 7, 1995, Tr. pp. 13,540-13,541; 13,553-13,554].

- There is another employer in the same building. The two are connected to a central hallway, and they leave their doors open every day. Employees of the other business smoke. Their smoke probably filters into our work area because there is no barrier to stop it. I understand I may be technically liable for a fine if the smoke from the other business invades my employees' work space. [Robert Collison, Kendall-Collison, Inc., February 21, 1995, Tr. p. 13,999].

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- Because our office space adjoins another employer's office space and smoke from the other employer can pass into our offices, the only way we could have a smoking room in our commercial office building would be for the landlord to convert one of his rental units into a smoking room. The landlord would not do that. If the landlord were to do it, he would either lose the rent of the rental space or recoup his costs by charging the renters. [Robert Collison, Kendall-Collison, Inc., February 21, 1995, Tr. p. 13,999-14,000].

- I am concerned about how OSHA plans to approach enforcement of the Proposed Rule. Specifically, if Employer A is responsible for Job X, will OSHA hold Employer B, who is a tenant in the same building, responsible for Employer A's wrong doing? Employers should not be held strictly liable for the acts of other employers or the other employees of other businesses. [Jan Collins, Executive Director of the Workplace Health and Safety Counsel, October 11, 1994, Tr. p. 2,721 - 2,722].

- The proposed regulation does not address what happens when employers in the same building have different compliance plans. [Jan Collins, Executive Director of the Workplace Health and Safety Council, October 11, 1994, Tr. p. 2,721].

- One concern of casinos is how to react to a gambler betting a lot of money that wants to smoke when the casino resort has a smoking ban. [Wayne Edward Mehl, Nevada Resort Association, Tr. p. 3580, 10/24/94]

- To ask clients to leave or extinguish their smoke places us in the role of police officer for this regulation, and also places us in a difficult position for a full-service travel agency. [Jim Gatherum, Travel Unlimited, December 14, 1994, Tr. P. 8,959-8,960].

- The proposed ETS rule cannot be enforced on construction sites or in buildings under construction. There are employees from more than 20 other subcontractors on this site doing other type work. I have no control over any of these employees. [Paul Philbrick, ELCO Electric, February 21, 1995, Tr. p. 13,969].

- I would find it difficult to force a client to stop smoking and so would our staff. The clients are very courteous but quite independent when it comes to being told they can't do something. [Rita Underwood, Hair Now, November 1,1994, Tr. p. 4,815].

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- It would also be difficult to enforce the policy against customers. [Bob Mendenhall, Owner, Juanita Champion Auto Parts Store and Imperial NAPA, February 3, 1995, Tr. p. 13,307].

- Regarding enforcement in the hotel rooms, I don't see how we could do it. I couldn't monitor 60 rooms. The staff and I would be overworked. [Joe Callahan, Motel Sleepers, February 3, 1995, Tr. p. 13,358].

- This rule also poses a problem for me in particular because when people come into my office smoking, I would have to ask them to put their cigarette out or ask them to step outside until they finish it. That poses a problem in that a lot of people would take that as an insult and would be offended by it. [J. Paige DuBois, Young & Associates, February 6, 1995, Tr. p. 13,440].

- Sometimes we try to find housing for people who don't have it. Welfare recipients come into our office and we try to help them find an alternative to Section 8 because there is such a waiting list in our area for that. A lot of these people smoke. It would be very difficult for me to tell these people not to smoke when they are sitting here worried about where they are going to sleep that night or how they are going to handle the problem that's before them. [J. Paige DuBois, Young & Associates, February 6, 1995, Tr. p. 13,441].

- Our salesman has been working with a customer for maybe two or three months. This customer is going to buy a vehicle. We don't know where or who from but we know he is going to buy. Sure enough, he and his wife come in one afternoon, finally in the closing booth, about to make that final buying decision and here she reaches in her pocket or her purse, whichever the case may be, for a cigarette. Am I supposed to tell my salesman at that crucial point and time that they must tell the customer to go outside or to go into a designated smoking room to smoke. At that crucial time, I don't think so. I think if I caught a salesman doing that, he would probably be looking for another job the next week. [Pete Tilghman, Jr., Tilghman Chevrolet, February 6, 1995, Tr. p. 13,498].

- The enforcement of ETS portions of the Proposed Rule would be very difficult, particularly with regard to telling a customer that he could not smoke. [Pete Tilghman, Jr., Tilghman Chevrolet, February 6, 1995, Tr. p. 13,511].

- Our business has many customers from foreign countries and many foreign suppliers, and it would be very difficult to tell

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these individuals not to smoke. [Leo DeJong, President of Metric Fasteners Corporation, Metric and Fasteners and American Fasteners Corporation, March 3, 1995, Tr. p. 14,608].

- He would have a problem enforcing a smoking ban on his drivers because many of the drivers like to smoke while driving. [Clyde Satterly, Farner-Bachen Wholesale Company, March 13, 1995, Tr. p. 15,068].

- Some of my customers smoke. I have a no smoking policy. Despite my no smoking policy, some of my customers smoke inside the facility. It is impossible to strictly enforce the no smoking policy with regard to customers. [Frank Walker, Cinderella Cleaners, February 21, 1995, Tr. p. 14,048].

- If the rule is implemented, it would be difficult if not impossible, to control the few customers who do smoke when they come into the establishment. [Ruth Cole Dusenbury, Speer Cushion, January 31, 1995, Tr.p. 12,935].

- What really concerns us is that we might have a customer come into the mill store smoking a cigarette, set up by a competitor or disgruntled former employee or a special interest group, we don't know if we have to post a guard at the door keeping cigarettes out or how we need to handle this. [Murphy Heard, Tee Jay's Manufacturing, February 6, 1995, Tr. p. 13,451].

- It would be impossible for me to enforce the Proposed Rule because my various offices are nearly 30 miles apart. [Debrah Baker, Pro Rental Management Company, March 2, 1995, Tr. p. 14,470].

- No matter what engineering control solution is used, OSHA must establish a permissible exposure limit for ETS. Even though establishing a PEL will be quite difficult, the absence of a PEL will leave employers open to a litigation nightmare. [Ms. Heidi Oas, Air Quality Engineering, November 21, 1994, Tr. p. 7,023].

- Placing the burden of enforcement on the owners of the business, the cities, counties and the state would be an enforcement nightmare. [Leonard V. Nevin, Nevada State Senator, November 30, 1994, Tr. p. 7,950].

- Your regulation mandates that each business take all complaints on alleged smoking violations in the casinos. Now, for example, a situation may occur where an anti-smoking group could send all their members to the casinos to protest an

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alleged violation because now we've given them a policy that they can go out and stand on. A policy on violations of smoking. [Leonard V. Nevin, Nevada State Senator, November 30, 1994, Tr. pp. 7,952-7,953].

- There are a number of local coffee shops and barber shops in this very rural district where people have been congregating for years to drink coffee, smoke cigarettes and discuss the issues and the gossip of the day. These people are not likely to give up their right to smoke without a fight. The potential enforcement problems are staggering. [Senator Mike Dmitrich, State Senator from Utah, January 9, 1995, Tr. p. 10,422].

- I have had difficulty enforcing the Washington State regulation with respect to foreign customers. When I have asked customers not to smoke they disregard my request with a smile. [Diane Michalek, Aviation West, October 27, 1995, Tr. p. 4,075].

- It would be very difficult to police and force customers not to smoke in the laundromat because on Sundays and holidays, there are no employees around. [Mike Flaim, APF, Inc., Laundromat, March 13, 1995, Tr. p. 15,030].

- It would be difficult to prevent the many drivers who are continually coming to the office space from smoking. [Karol Brown, Point to Point, Inc., February 10, 1995, Tr. p. 13,871, 13,875-13,876].

- It would be an injustice to employers if the regulation makes the business owners the enforcers of this regulation or the smoke police, as well as responsible for paying fines if someone, an individual, lights up a tobacco product. [Rita Underwood, Hair Now, November 1, 1994, Tr. p. 4,815].

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